

Texas Auctioneers Association – Open Letter – Part 1 of 3

Date: May 1, 2015

To: Texas Auctioneers Association
201 Stillwater, Ste. 8
Wimberley, TX 78676

From: Charlie Dean, TAA member, Texas resident

Re: **Regulation of the Auction Chant and Reciprocity**

The Auction Chant Should Not Be Regulated In Texas.

This is the first in a three-part series of an open letter to the Texas Auctioneers Association (TAA). Regulating the auction chant in Texas has little to do with **protecting the public** and a lot to do with **unfair trade practices**. The auction chant is a natural resource, along with singing, yodeling, storytelling, picking the guitar, and playing the piano. Imagine a state that prohibits playing the piano for a fee, unless the piano player is a member of the guild licensed by the state. Getting a piano license would require attending a week-long school, passing a background check, taking a test, yearly fees, and continuing education. A piano player could play the piano for free, but he could not earn money without a piano license.

The auction chant (or the ability to produce it) is a sustainable resource, sort of like wetlands and forests. It can be used without being completely used up or destroyed, and it replenishes itself quickly. It can last a long time, as long as a person is available to use it. It is diverse and productive. This rhythmic repetition of numbers and filler words belongs to anybody who develops it. Texas did not develop the auction chant, nor has Texas fostered it. The chant belongs to individuals who use it. Texas can hardly claim to be a **market participant** with respect to the auction chant. Texas has **no interest in the auction chant** and has no right to regulate its use.

When man discovered fire it extended the usable period of each day. Man's first artificial light also created a perfect opportunity in the evening for storytelling, an original form of social media. The early hearths became the birthplace of language, kinship and myth—elementary building blocks of culture. In addition to making artifacts for museums, man could develop his vocal skills and language skills. Texas was not around when this process began, and Texas has not fostered it one iota.

Some states such as New Mexico and Oklahoma are blessed with numerous earthy natural resources including the auction chant. Individuals seized of this natural self-replenishing resource should be able to ply their trade, in an unfettered manner, as they migrate around the country. There is no shortage of this resource, and there is **no fairness in hoarding it**.

New Mexico and Oklahoma do not regulate the use of the auction chant. These states do regulate commission merchants. Once the commission merchants are qualified, they are allowed to hire anybody to sing, yodel, tell stories, play the piano, use the auction chant, et cetera with no further restriction. Absent a compelling reason, private business owners should be free to exercise their own independent discretion as to parties with whom they will deal. Texas should play a unifying role in interstate commerce. Instead, Texas has pursued an **isolationist regulatory policy** at the behest of TAA's lobbyist.

Using the auction chant (without a license) does not bring hazards. It should not matter if the auction chant is developed in a desolate, remote, neglected, and bleak environment like New Mexico. Nor that it is developed in an ignorance-based conservative leaning state like Oklahoma amid the hillbillies and roughnecks. Toxic waste, radiation, earthquakes, or even an embarrassing ideology does not encumber auction chants.

One could hardly argue that New Mexicans and Okies are not as smart as us Texacans and therefore need to be regulated. Nor could one argue that their livelihood is any less important. Surely they are entitled to migrate around the country and ply their trade without being abused at the Texas border.

The **secondary market** that Texas Auctioneers work in does not belong to Texas. Texas has not fostered it, has no interest in it, and has no right to regulate this market, unless there is compelling potential of harm to citizens. There is no empirical evidence that identifies any harm from the auction chant. Nevertheless, heavy-handed regulation exists and is **skewed to unfairly favor** some Texas Auctioneers. It is questionable how many Texas Auctioneers actually benefit, or even want the burdensome regulation.

Some members of TAA have an insatiable thirst for more regulation. Others are not as thirsty. And a lot of Texas Auctioneers do not belong to TAA, and one might presume they are not as fixated on more regulation. Some can barely afford what they are tolerating. It is not enough to respond by saying that we have had regulation for years and that it should continue. It is more appropriate to imagine that we have no regulation and explain why new regulation might be needed. So far most of what I have heard in support of regulation is in the ipse dixit category. The burden of proof should be on the proponents of regulation.

The ability, talent, skill, and proficiency in the use of the auction chant is personal property. This personal property has value. This service can be exchanged for money or something else of value. We do not require a commission merchant to acquire an additional permit so he can conduct business while humming, singing, telling stories, or playing the piano as a form of entertainment to induce higher selling prices.

The auction chant has value to the possessor and is a livelihood for some people. **Goods and services are commerce. This commerce does not belong to Texas. Texas is not a market participant with respect to the auction chant. There is no state interest in the auction chant.** It violates the **Commerce Clause** for Texas to regulate this form of commerce without first identifying the danger, and second considering the least onerous manner to regulate whatever the danger might be. The actions of Texas and the TAA lobbyist promote unfair trade practices. Texas should prohibit unfair trade practices. Instead, Texas promotes it with the help of TAA's lobbyist.

Texas has created no commerce in, and has contributed nothing to the **secondary market** where commission merchants, Auctioneers who are essentially commission merchants, and individuals participate. An auctioneer acts as a trading assistant (**commission merchant**). **A commission merchant is essentially an Auctioneer without the auction chant.** Whether a commission merchant quacks like an auctioneer or yodels like a hillbilly should make no difference. A commission merchant puts other people's items up for sale and handles their money. The public needs protecting, so the various types of commission merchants have various regulations. Surely they do not need an extra permit to quack or yodel.

Texas is not a market participant in the secondary market. Yet, at the behest of TAA's lobbyist, Texas alters dramatically an already-existing market by restricting the use of the auction chant. Texas only has an **imaginary interest** in this market, and TAA's lobbyist has

provided that imagination. The effect of this has been to favor a few, and I suggest that has been the intent all along. So what exactly is Texas regulating? Is Texas claiming to be in the business of unfair trade practices, and thus entitled to regulate within the market of unfair trade practices? Perhaps Texas should first consult with TAA's lobbyist before answering.

Now pawnbrokers, as if they do not have enough to be embarrassed about already, may be swallowed up by a new definition of Auctioneer. Let's subsume ice shavers and shoe shine boys while we're at it. Go get 'em Texas, Florida, Wisconsin, and Maine.

Consider a charity auction. How would the charity be harmed by bringing in its own favorite New Mexico Auctioneer whom is not licensed in Texas? Please, someone explain it. Doing the auction chant is not like installing electrical wiring and fuse boxes. When about half the states do not restrict the use of the auctioneer chant, it is disingenuous to argue that Texas must. One can hardly argue that there is **no less burdensome method** to safeguard the public from the dangers of an out-of-state auction chant, when no danger has been identified in decades.

It is disingenuous to argue that an auction business the size of Ritchie Brothers, Manheim, and Surplus.Gov operating in multiple jurisdictions should not be able to hire any Auctioneer it wants—license or no license.

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